

## **REMARKS**

### **I. Introduction**

Claims 1 to 51 are pending in the present application. In view of the enclosed "Second Declaration Under 37 C.F.R. § 1.131" and the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Applicants thank the Examiner for considering the Supplemental Information Disclosure Statement, PTO-1449 paper and cited references.

### **II. Power of Attorney and Correspondence Address**

As an initial matter, a "Power of Attorney by Assignee of Entire Interest (Revocation of Prior Powers and Appointment of New Power)" was submitted on August 20, 2004, which directed all further correspondence to be directed to Kenyon & Kenyon, One Broadway, New York, New York 10004. The present Office Action was mailed to the prior correspondence address. Enclosed herewith is a courtesy copy of the Power of Attorney submitted on August 20, 2004 along with a date-stamped postcard that indicates that the Office received the Power of Attorney on August 23, 2004. Applicants respectfully request immediate entry of the Power of Attorney and that all future correspondence be directed to Kenyon & Kenyon, as indicated in the Power of Attorney.

### **III. Allowable Subject Matter**

Applicants note with appreciation the indication of allowable subject matter contained in claims 15 to 17.

### **IV. Rejection of Claims 1, 4, 5, 7 to 9, 13, 18, 19, 25 to 29, 35, 36 and 49 Under 35 U.S.C. § 102(e)**

Claims 1, 4, 5, 7 to 9, 13, 18, 19, 25 to 29, 35, 36 and 49 were rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent Application Publication No. 2003/0050019 ("the '019 publication"). Applicants respectfully submit that the '019 publication does not anticipate the present claims for the following reasons.

The '019 publication was published on March 13, 2003 based on U.S. Patent Application Serial No. 09/949,533, which was filed on September 7, 2001. Enclosed herewith is a "Second Declaration Under 37 C.F.R. § 1.131" signed by the

named inventors hereof, which establishes that the subject matter described and claimed in the present application was conceived prior to September 7, 2001 and that the inventors hereof acted with sufficient diligence from prior to September 7, 2001 to the filing date of the present application, i.e., December 12, 2001. Under 37 C.F.R. § 1.131, prior invention may be established by establishing conception prior to the effective date of the reference coupled with due diligence from prior to the reference date to the filing of an application. Since the enclosed "Second Declaration Under 37 C.F.R. § 1.131" establishes conception of the subject matter hereof prior to September 7, 2001, i.e., the filing date of the '019 publication, and sufficient diligence from prior to the reference date, i.e., September 7, 2001, to the filing date of the present application, i.e., December 12, 2001, it is respectfully submitted that the '019 publication does not anticipate any of the present claims.

In view of the foregoing, it is respectfully submitted that the present rejection has been obviated. Withdrawal of this rejection is therefore respectfully requested.

#### **V. Rejections Under 35 U.S.C. § 103(a)**

As regards the numerous rejections raised under 35 U.S.C. § 103(a), all of these rejections are based at least in part on the '019 publication. As indicated above, the '019 publication has a filing date that is after the date of invention of the subject matter described and claimed in the present application. It is therefore respectfully submitted that the '019 publication does not constitute prior art against the present application, and all of the rejections raised under 35 U.S.C. § 103(a) should consequently be withdrawn.

Additionally, since the enclosed "Second Declaration Under 37 C.F.R. § 1.131" establishes a date of invention before September 7, 2001, it is respectfully submitted that at least U.S. Patent No. 6,778,180, which issued on August 17, 2004 based on U.S. Patent Application Serial No. 09/967,833 filed on September 28, 2001, and U.S. Patent Application Publication No. 2003/0078082, which published on April 24, 2003 based on U.S. Patent Application No. 10/015,176 filed on October 22, 2001, do not constitute prior art against the present application. Thus, the rejections raised under 35 U.S.C. § 103(a) that are based on U.S. Patent

No. 6,778,180 or U.S. Patent Application Publication No. 2003/0078082 should be withdrawn for this additional reason.

**VI. Conclusion**

It is therefore respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

KENYON & KENYON

Date:

March 24, 2005

By:



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